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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/626,369	07/23/2003	Pu-Sheng Cheng	88265-10365	1237
28765	7590	06/16/2005	EXAMINER	
WINSTON & STRAWN LLP 1700 K STREET, N.W. WASHINGTON, DC 20006			WEIER, ANTHONY J	
			ART UNIT	PAPER NUMBER
			1761	

DATE MAILED: 06/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/626,369

Applicant(s)

CHENG ET AL.

Examiner

Anthony Weier

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 February 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 and 21-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 and 21-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of Group I in the reply filed on 2/14/05 is acknowledged.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 22 and 23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is not clear in claims 22 and 23 as presently recited as to the nexus of the first and second means with the rest of the components of the dispensation system.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1-5, 7, 21-30 rejected under 35 U.S.C. 102(e) as being anticipated by Brugger (U.S. Patent No. 5971210).

Brugger discloses a packaging assembly configured and designed to hold two different components in separate compartments wherein said packaging comprises a pump assembly with separate fitments and pumping parts associated with each of the compartments for pumping the components from the packaging assembly to a chamber operatively associated with the compartments (e.g. 23) wherein said chamber acts to receive and combine the contents of the compartments. It is considered inherent that the amount of each component would empty from each compartment at substantially the same time due to the dual pumping system present (see Figures).

The claims further call for the particular components housed in each of the compartments of the packaging assembly (e.g. claims 2-4). However, the instant claims pertain to apparatus claims wherein the material worked on is given patentable weight only in so much as same effects the structure of the apparatus therein. It is not seen wherein the particular materials employed within the apparatus contribute to the particular structure of the apparatus therein and furthermore that same would provide for a patentable distinction regarding the structural limitations of the apparatus.

The claims further call for said compartments possessing orifices having sizes dependent on the viscosities of the components therein wherein the compartments become empty at substantially the same time. Brugger, for example, employs two tanning lotions wherein it is inherent that the viscosities of each would be the same and wherein the orifices employed are the same (see Figures). As such, it is inherent that the contents of each compartment would empty at substantially the same manner

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because of the similarity in material employed and the same size of outlet or orifice from each compartment.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brugger.

The claims further call for the packaging assembly being a single chamber of a polymer film divided into compartments. Brugger is silent regarding the particular composition of the packaging assembly. However, it is notoriously well known to employ polymer films in packaging assemblies. Absent a showing of unexpected results, it would have been obvious to one having ordinary skill in the art at the time of the invention to have employed a polymer film as a matter of preference depending on, for example, availability and cost involved.

8. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brugger taken together with Hogan.

The claims further call for said packaging assembly to employ a peristaltic pumping system. However, such are well known as taught, for example, by Hogan (see Figures) and, absent a showing of unexpected results, it would have been obvious to

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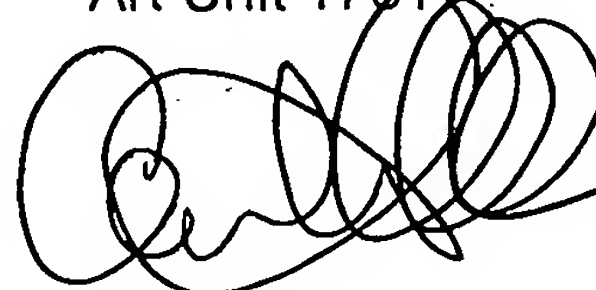
one having ordinary skill in the art at the time of the invention to have modified the pumping system of Brugger to incorporate a peristaltic action as a matter of preference.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony Weier whose telephone number is 571-272-1409. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Anthony Weier
Primary Examiner
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Anthony Weier

June 9, 2005